

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7092 of 1998

to

FIRST APPEAL No 7100 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? No

4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No :

SPL.LAQ OFFICER

Versus

DABHI AMBALAL CHUNTHAJI

Appearance:

MR HL JANI, A.G.P.for appellants

MR KM SHETH for Respondents-claimants

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/08/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

Admitted. Mr. K.M.Sheht, learned Counsel waives service of notice on behalf of the original claimants in each appeal. At the joint request of the learned Counsel appearing for the parties, the appeals are taken-up for final hearing today.

By means of filing these appeals under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of judgment and award dated April 30, 1998 rendered by the learned 2nd Extra Assistant Judge, Kheda at Nadiad, in Land Reference Cases No.155/94 to 161/94, 734/94 & 735/94.

2. The Executive Engineer, Narmada Project had proposed to the State Government to acquire agricultural lands of village Sarkhej, Taluka : Kapadwanj, District : Kheda for the public purpose of Ghodasar Branch of Narmada Project. On scrutiny of the said proposal, State Government was satisfied that agricultural lands of village Sarkhej were likely to be needed for the said public purpose. Accordingly, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in Government Gazette on August 29, 1991. The owners whose lands were proposed to be acquired were served with notices and they had filed their objections against the proposed acquisition. After taking into consideration their objections, necessary report was forwarded by the Land Acquisition Officer to the State Government as contemplated by section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural lands of village Sarkhej which were specified in the notification published under section 4(1) of the Act were needed for the public purpose of Ghodasar Branch of Narmada Project. Therefore, declaration under section 6 of the Act was made which was also published in the Government Gazette on February 20, 1992. The claimants were thereafter served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 10,000/- per Are, but having regard to the materials placed before him, the Land Acquisition Officer by his award dated June 29, 1992 offered compensation to the claimants at the rate of Rs. 210/- per Are for irrigated lands and Rs. 140/- per Are for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was

inadequate. Therefore, they made applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Kheda which were numbered as Land Reference Cases No. 155/94 to 161/94, 734/94 & 735/94. In the reference applications, it was pleaded by the claimants that their agricultural lands which were acquired were highly fertile and having regard to the income derived by the claimants from the sale of agricultural produces, they were entitled to compensation at the rate of Rs.10,000/per Are. The appellants contested those applications by filing reply at Exh.5 contending, inter-alia, that the Land Acquisition Officer had determined compensation after taking into consideration the fertility of the lands acquired, pattern of crop raised as well as income derived by the claimants from the sale of agricultural produces and, therefore, the reference applications should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the reference court at Exh.6. On behalf of the claimants, their learned Counsel had produced Village Forms 7/12 at Exh.10 to 27 and previous award of the Court in respect of lands of village Sarkhej rendered in Land Acquisition Reference No.1247/93 at Exh.28. Thereafter a purshis was filed on behalf of the claimants at Exh.29 requesting the reference Court to decide the cases on the basis of previous award relating to lands of village Sarkhej. On behalf of the appellants, one sale deed was produced at Exh.30/1; whereas Deputy Collector Mr. Shah was examined at Exh.32. On appreciation of evidence led by the parties, the reference court deduced that the previous award of the reference court with regard to agricultural lands of village Sarkhej was relevant as well as comparable and market price of the lands acquired in the present cases should be determined on the basis of the said award. The previous award indicated that the market value of the agricultural lands of village Sarkhej as on August 29, 1991, which was the date of publication of notification under section 4(1) of the Act, was Rs.870/- per Are, but it was noticed that while determining market value of the agricultural lands of village Sarkhej, another previous award rendered in respect of lands of village Chhipadi was relied upon and, therefore, the reference court in the present case came to the conclusion that appropriate deduction should be made from the market value of the lands indicated in the award Exh.28 so as to arrive at the correct market value of the lands acquired in the present case. In the ultimate analysis, the reference Court held that the

claimants are entitled to Rs.760/- per Are by the impugned award, giving rise to present appeals.

3. Learned Counsel for the appellants submitted that the previous award of the Court produced by the claimants at Exh.28 was neither comparable nor relevant for the purpose of determining market value of the lands acquired in the present case and, therefore, the same should not have been made basis for determining market value of the lands acquired in this case. It was claimed that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs. 760/- per Are and, therefore, the impugned award should be set aside.

4. Mr.K.M.Sheth, learned Counsel for the claimants submitted that previous award of the reference court produced before the reference Court at Exh.28 is not only relevant, but also comparable and, therefore, it cannot be said that any error was committed by the reference Court in relying upon the same while determining the market value of the lands acquired in the present case. What was stressed by the learned Counsel for the claimants was that a just award has been passed by the reference Court determining the market value of the acquired lands and, therefore, the appeals should be dismissed.

5. We have heard the learned Counsel for the parties. We have also taken into consideration the relevant documents produced by the learned Counsel for the parties before us for our perusal. From the record of the case, it becomes evident that the claimants have relied upon the previous award of the reference Court rendered in respect of agricultural lands of village Sarkhej itself produced at Exh.28. It is well settled that previous award of the reference Court in respect of the similar lands in the same village and which has become final, can be relied upon for the purpose of determining market value of the lands acquired in the same village subsequently. Though Deputy Collector Mr. Shah was examined on behalf of the appellants, it was never brought to the notice of the Court by him that the agricultural lands acquired in this case were inferior in quality than the agricultural lands in respect of which award was rendered at Exh.28. The evidence led by the claimants establishes that the agricultural lands acquired in the present case were similar in all respects to the lands which were previously acquired and which were subject matter of Exh.28. Under the circumstances, we are of the opinion that no error was committed by the

reference Court in placing reliance on Exh.28 while determining the market value of the lands acquired in this case. It may be stated that Exh.28 indicates that while determining market value of the agricultural lands of village Sarkhej, previous award rendered by the reference Court in respect of lands of village Chhipadi was relied upon. Moreover, lands acquired in the present case were/are on the bank of river Vatrak and, therefore, having regard to the totality of the facts and circumstances of the case, the reference Court has deduced in the present case that appropriate deduction should be made from the market value of the lands as indicated in Exh.28 while determining the correct market value of the lands acquired in the present case. In the ultimate analysis, the reference Court has rightly come to the conclusion that the claimants are entitled to compensation at the rate of Rs. 760/- per Are. We may state that the State Government had preferred First Appeals No.557/98 to 563/98 in the High Court against previous award at Exh.28 rendered in Land Reference Cases No.1234/93 to 1236/93 and 1244/93 to 1246/93 and the appeals were rejected by the Division Bench vide order dated June 19, 1998. Thus, there is no manner of doubt that previous award which was relied upon by the reference Court has become final between the parties. On overall view of the matter, we are satisfied that just compensation has been determined by the reference Court and no ground is made out by the appellants to interfere with the same in the present group of appeals. The appeals, therefore, are liable to be dismissed.

For the foregoing reasons, the appeals fail and are dismissed, with no order as to costs.

(patel)